



**CHARTER REVIEW SUB-COMMITTEE OF THE CITY OF SAN DIEGO  
FINANCIAL REFORM SUB-COMMITTEE  
CHAIR- DONNA JONES**

**MINUTES FOR  
FRIDAY, AUGUST 10, 2007, AT 9:00 A.M.**

**COUNCIL COMMITTEE ROOM (12<sup>TH</sup> FLOOR),  
CITY ADMINISTRATION BUILDING  
202 C STREET, SAN DIEGO, CALIFORNIA**

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9:15 Call to Order. Roll Call.

Committee Members:

Donna Jones, Chair	Present
John Gordon	Present
Vincent Mudd	Present
Lei-Chala Wilson	Present
James Milliken	Present

Staff in Attendance:

Jay Goldstone, CFO, City of San Diego  
James Ingram, Committee Consultant  
Lisa Briggs, Office of the Mayor  
Woo-Jin Shim, Office of Council President Peters  
Andrea Tevlin, Independent Budget Analyst  
Brant C. Will, City Attorney's Office  
Larry Tomanek, City Attorney's Office

Guest:

Randy Spenla, City Auditor, City of Phoenix

NON-AGENDA PUBLIC COMMENT

Mr. Phil Hart addressed the Subcommittee regarding the full Committee's decision to support increasing the City Council to eleven (11) members. He noted that larger cities and larger legislative bodies are not necessarily more effective despite their size.

## SUB-COMMITTEE COMMENT

Mr. Gordon asked where the City Attorney is relative to the work of the Subcommittee given the lack of written feedback received to date. Both Mr. Tomanek and Mr. Will responded that the City Attorney's office does not wish to weigh in on these issues until final decisions are made. Subcommittee Chair Jones again requested that the City Attorney's office advise the Committee as to whether the decisions being made by both the Subcommittee and the Committee as a whole comply with the law.

## CITY ATTORNEY, COUNCIL INDEPENDENT BUDGET ANALYST COMMENT.

Mr. Will responded briefly to the memo from James Ingram on Article 11 of the California Constitution noting that he had not asserted that an Audit Committee was prohibited. Mr. Will noted that the issue is the delegation of legislative authority that raised the concern about the composition of the Audit Committee.

Ms. Tevlin addressed some of the content in an article which appeared in the Voice of San Diego. Ms. Tevlin had arranged to have Mr. Stanley Keller's response to the article distributed to the Subcommittee. She clarified her position which was mischaracterized in the article.

Ms. Briggs addressed changes in the work plan. Specifically, the Subcommittee had been set to begin dealing with issues relating to the composition of the SDCERS Board. However, due to the full agenda and the need to fully address the issues of audit committee and internal auditor, the SDCERS issue was not part of today's agenda. Ms. Briggs noted that the work plan would be changing as a result.

### ITEM – 1: Internal Auditor and Audit Committee

One issue that was deferred from last time was discussion of whether the internal auditor should be elected or appointed. Staff was directed to obtain speakers on this issue. Ms. Laura Chick, the elected auditor for the City of LA was invited, but not able to attend the meeting. She did address the Rules Committee back in April and subcommittee members have been given the link for that testimony. Mr. Randy Spenla, City Auditor for the City of Phoenix, was able to attend and addressed the subcommittee. A copy of his PowerPoint presentation is attached to these minutes.

The City Auditor for Phoenix is appointed by the City Manager and reports to the City Manager. In addition, Phoenix has an Audit Committee which is comprised of legislative, public and management representatives. The Internal Auditor's annual plan is approved by the Audit Committee. In Phoenix, the Internal Auditor can be terminated by the City Manager. The City Manager must disclose the reason for the dismissal, but that is the only requirement. There is no defined term for this position and the salary and performance evaluation are conducted by the City Manager.

Regarding the position of internal auditor, Mr. Spenla emphasized that the independence of this position is key. Further, that the ability of this position to be independent from management really does come down to all parties in the system---management, Council and Mayor---respecting the need for independence. Further, the Office of the Internal Auditor needs to be given the resources necessary to carry out its mission. This includes not just personnel, but also the technology.

Regarding Phoenix's Audit Committee, it is comprised of 3 Council Members, 3 Citizens and 3 members of management. It was established in 1977 as a result of financial issues. The Audit Committee approves the Internal Auditor's annual plan, offers policy guidance to the Auditor and approves the contract for the external auditor to complete the CAFR. Citizen members are volunteers who are confirmed by the Mayor and Council. Mr. Spenla was very candid in noting that it is not easy to find volunteers.

Mr. Will asked how much of the duties for the Internal Auditor and Audit Committee are spelled out in the Phoenix Charter. Mr. Spenla replied that much of the duties were outlined in the municipal code, but some duties were put in the Charter. He noted that this was not necessarily effective since best practices and needs change. Some of the reporting requirements laid out in the Charter no longer work well in practice.

Overall, Mr. Spenla's message was that there is no one appointment process for the Auditor or composition of a committee is best. The key is to create a system that respects the independence of both and ensures that the tools are in place to meet the needs of the citizens for honest reporting and disclosure. Mr. Spenla concluded his report.

There were two public speakers on the issue. Mr. Mel Shapiro referenced earlier reports to the Subcommittee on the appointment process for Internal Auditors in other jurisdictions. He noted that none of the cities surveyed had the Mayor appointing the auditor. Some did have the City Manager appointing the individual. Mr. Phil Hart emphasized the need for independence for the Internal Auditor. He did note that while Council appointment makes sense, consideration must also be given to the fact that Council also approves contracts. He took issue with the earlier decision of management to temporarily discontinue the internal auditing functions in favor of focusing on getting the delayed CAFRs out and the lack of Council input into that decision.

The Subcommittee began discussion of the Audit Committee. It was agreed by the Subcommittee members that the key outstanding issues were: Composition of the Audit Committee and the appointment process for any non-legislative members. The remaining language was satisfactory.

There was consensus among the members that the Audit Committee needed to be independent and that goal was best served with a majority of members being public with the remaining members being drawn from the City Council. Regarding the appointment of the public members, there was discussion of whether having the Mayor appoint all/some or having the Council appoint all/some best served the goal of independence and balance. It was noted that the current system of appointments to every other commission/committee is Mayor nominating individuals with the Council confirming. After some discussion, the group reached consensus on having two (2) members nominated by the Mayor, approved by Council. The final public member, appointed solely by the City Council.

Discussion then moved to the question of whether a body composed of both legislative and public members can legally carry out the duties of the Audit Committee. Mr. Will noted that section 11.1 of the Charter would need to be addressed. He also cautioned that, down line, there could be unknown legal challenges. Judge Milliken cited Mr. Ingram's memo and noted that the language could be drafted to avoid the Charter conflict with little chance of later legal challenge. Mr. Mudd also noted that the Audit Committee is not making budget decisions, but is serving a policy role in working with the Internal Auditor.

Motion by Mr. Mudd: Create a five member Audit Committee to be comprised of three (3) public members and two (2) City Council members. Two (2) of the public members shall be

nominated by the Mayor and confirmed by the City Council. The remaining one (1) public member shall be appointed by the City Council. The Committee to be chaired by a Council member.

Second by Donna Jones.

Passed unanimously.

Staff was directed to draft a report that outlined the “legislative intent” of the subcommittee that captured the rationale and intent of the committee. That will accompany the final recommendations to the full City Council.

Discussion then turned to the issue of Internal Auditor.

It was agreed by the Subcommittee members that the key outstanding issues were:

- Elected vs. appointed Internal Auditor
- If Appointed, by whom
- Termination and safeguards
- To whom does Internal Auditor report

The remaining language was satisfactory.

Judge Milliken opened the discussion by stating his preference for an appointed position. He made a motion that the position of internal auditor be nominated by the Mayor, confirmed by the Council and removal only possible by the Audit Committee. Ms. Jones seconded the motion.

Both Mr. Goldstone and Ms. Tevlin noted that the Mayor should work with the Audit Committee in the selection process. Ms. Tevlin reiterated her earlier observation that the Internal Auditor needed to report and is accountable to the Audit Committee, but that the process does benefit if management has a role in the initial hiring of the position. Mr. Goldstone concurred and cited the current process that the City is going through to hire a new Internal Auditor.

Mr. Gordon made several points in rebuttal to the idea that appointment was the best alternative to insure independence. Mr. Gordon noted that, at some point, Council actions needed to be audited; thus, the only true independence came from an elected auditor. Further, if one accepts that Strong Mayor is superior because the individual proposing the budget should be directly accountable to the people, why should the individual making sure that budget is executed appropriately not also be directly accountable to the people. Finally, one need only look to the past mistakes outlined in the Kroll report to see the need for a different approach.

Other committee members noted their concern that, should the position be elected, there were no guarantees that the individual would have the requisite skills necessary for the job.

Mr. Mudd noted that the IBA’s proposed language seemed to best capture the appointment process as well as the reporting structure. He asked if the maker of the motion and the second would mind amending the motion to just approve the IBA language. Both agreed. The original motion was withdrawn and a new motion put on the floor.

Motion by Mr. Mudd, second by Judge Milliken, to adopt the language put forward by the IBA and contained in the document titled: Creation of Position of Internal Auditor dated 8/10/07. Specifically, that the position of Internal Auditor be appointed by the City Manager in consultation with the Audit Committee and confirmed by the City Council. The Internal Auditor shall report to the Audit Committee and the language needs to reflect that reporting structure.

Further, the Internal Auditor can only be terminated by the Audit Committee with a right to appeal to the full City Council. A copy of the above referenced document is attached to these minutes.

Passed with 3 voting aye, one nay, one abstention.

Staff was directed to draft a report that outlined the “legislative intent” of the subcommittee that captured the rationale and intent of the committee. That will accompany the final recommendations to the full City Council.

ITEM – 2:     Balanced Budget Requirement

This item was trailed and will be taken up at the next subcommittee meeting.

ITEM – 3:     Minutes from July 27, 2007 Financial Reform Subcommittee Meeting

Motion by Mr. Mudd, second by Judge Milliken, to accept the minutes of July 27, 2007 as presented.

Passed unanimously.

11:30 Adjourn